

Message Text

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ACTION EB-11

INFO OCT-01 EUR-25 EA-11 IO-14 ISO-00 DOTE-00 CIAE-00

COME-00 DODE-00 FMC-04 INR-10 NSAE-00 RSC-01 CG-00

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PASS DEPARTMENT OF TRANSPORTATION AND COMMERCE

E.O. 11652: N/A

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SUBJECT: EC TRANSPORT POLICY--OCEAN AND AIR TRANSPORTATION

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1. SUMMARY: A EUROPEAN COURT OF JUSTICE DECISION REGARDING THE FRENCH MARITIME LABOR CODE CONFIRMED THE EC COMMISSION'S POSITION THAT THE GENERAL RULES OF THE TREATY OF ROME APPLY TO SEA AND BECOME ACTIVE IN THESE AREAS OF TRANSPORTATION WHICH HAVE BEEN RESERVED TO THE MEMBER STATES. THE NATURE AND SPEED OF COMMISSION INTERVENTION IN THESE FIELDS IS NOT YET CLEAR. END SUMMARY.

2. THE EUROPEAN COURT OF JUSTICE RENDERED A JUDGMENT IN WHICH IT HELD THAT FRANCE, BY MAINTAINING PROVISIONS IN ITS MARITIME LABOR CODE WHICH REQUIRED THAT CERTAIN POSITIONS ON FRENCH MERCHANT SHIPS BE HELD EXCLUSIVELY BY FRENCH NATIONALS, FAILED TO FULFILL ITS OBLIGATIONS UNDER ARTICLE 48 OF THE TREATY OF ROME (FREEDOM OF MOVEMENT FOR WORKERS). (SEE THE OFFICIAL JOURNAL, VOLUME 17, NO. C70/5 OF JUNE 18, 1974). THIS DECISION, WHICH IS IMPORTANT TO MERCHANT SAILORS, ALSO UPHELD THE EC COMMISSION'S CONTENTION THAT THE GENERAL PROVISIONS OF THE ROME TREATY APPLY TO SEA AND AIR TRANSPORTATION. GENERAL PROVISIONS OF THE TREATY COVER SUCH MATTERS AS THE RULES ON COMPETITION (ARTICLES 85 AND 86), LIMITATIONS ON GOVERNMENT SUBSIDIES (ARTICLES 92-94), RIGHTS OF REESTABLISHMENT (ARTICLES 52-58), ETC.

3. THE MISSION HAS NOT SEEN THE FULL TEXT OF THE COURT'S DECISION BUT COMMISSION OFFICIALS HAVE TOLD US THAT FRANCE HAD ARGUED THAT BECAUSE ARTICLE 84-2 SPECIFICALLY EXCLUDES SEA AND AIR TRANSPORT FROM THE PROVISIONS OF TITLE IV (ARTICLES 74-84) WHICH COVER COMMON TRANSPORTATION POLICY, ARTICLE 48 DOES NOT APPLY TO SEA TRANSPORT. FRANCE AND OTHER MEMBER STATES, RELYING ON ARTICLE 84-2, HAVE CONSISTENTLY RESISTED COMMISSION ACTIVITY IN THE AREAS OF SEA AND AIR TRANSPORTATION, EVEN COMMISSION REQUESTS TO UNDERTAKE STUDIES IN THESE FIELDS.

4. ALTHOUGH THE COMMISSION HAS ALWAYS MAINTAINED THAT THE GENERAL RULES OF THE TREATY APPLIED TO SEA AND AIR TRANSPORT, THE COURT DECISION ON THE FRENCH MARITIME LABOR CODE, (WHICH IS REFERRED TO IN THE TRANSPORTATION DIRECTORATE GENERAL AS THE APRIL 4 DECISION), MATERIALLY CHANGES THE COMMISSION'S LIMITED OFFICIAL USE

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EFFECTIVE ROLE. EC COMMISSIONER SCARASCIA-MUGNOZZA, THE COMMISSIONER RESPONSIBLE FOR TRANSPORTATION, IN A DECLARATION TO A COUNCIL OF TRANSPORTATION MINISTERS ON JUNE 27, EMPHASIZED THE SIGNIFICANCE OF THE COURT DECISION. HE ALSO SUGGESTED THAT THE PRACTICAL CONCLUSION TO BE DRAWN FROM THE DECISION IS THAT A COHERENT POLICY ON SEA AND AIR TRANSPORTION SHOULD BE DEVELOPED. THIS COULD BE DONE IF THE COUNCIL GIVES ITS APPROVAL AS PROVIDED FOR IN ARTICLE 84-2.

5. COMMENT: THE MISSION HAS NOT YET BEEN ABLE TO ASSESS THE FULL IMPLICATIONS OF THE DECISION. COMMISSION OFFICIALS HAVE TOLD US THE COMMISSION ITSELF IS NOW TRYING TO DECIDE WHAT TO DO. THE COMMISSION HAS BEEN MEETING WITH SHIPPING AND AIRLINE OFFICIALS AND THERE IS TO BE A MEETING OF GOVERNMENT TRANSPORTATION EXPERTS IN SEPTEMBER. A MODEST CONCLUSION THAT CAN BE DRAWN IS THAT THE COMMISSION WILL NOW BE LOOKING AT A WIDE RANGE OF PROBLEMS REGARDING SEA AND AIR TRANSPORT. OFFICIALS IN THE DIRECTORATE GENERAL ON TRANSPORTATION WILL BE HARD AT WORK DEVELOPING PROPOSALS. WHEREAS THE COMMUNITY TRANSPORT POLICY, WHICH ONLY COVERED RAIL, ROAD AND INLAND WATERWAYS. WAS OF MARGINAL CONCERN TO THE US, COMMISSION ACTIVITY IN SEA AND AIR TRANSPORT WILL FIND THE COMMISSION NOW DEALING WITH AREAS OF CONSIDERABLE INTEREST TO THE US. SCARASCIA TOLD THE TRANSPORTATION MINISTERS THAT "THE PRESENT EVOLUTION IN THE AREAS OF SEA AND AIR TRANSPORTATION WILL PERMIT US TO TAKE GREATER ADVANTAGE OF THE COMMUNITY'S PARTICIPATION IN THE OECD, UNCTAD, AND IMCO."GREENWALD

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